

**FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MOSES PEREZ and DEE PEREZ,

Plaintiffs,

v.

K&B TRANSPORTATION, INC. and KIARA
WHARTON,

Defendants.

Case No. 1:17-cv-02610

**PLAINTIFFS' EMERGENCY MOTION TO REVISE THE
RULE 26(a)(2) DISCLOSURE & DEPOSITION DEADLINES & PRESERVE ALL
REMAINING COURT-ORDERED DEADLINES OR, ALTERNATIVELY, GRANT THE
FIRST CONTINUANCE OF TRIAL OF THIS MATTER**

Plaintiffs, MOSES PEREZ and DEE PEREZ, Emergently Move this Honorable Court to Revise the Plaintiffs' Rule 26(a)(2) Disclosure Dates and Preserve all Remaining Court-Ordered Deadlines, or Alternatively, Continue Trial of this Matter for 45 days, and states:

1. This cause arises after the Defendant allegedly crashed her 52,000lb Mack Truck into the vehicle operated by the Plaintiff on January 20, 2016.
2. In May of 2017, the parties entered their Joint Rule 26(f)(1) report which designated that trial of this matter would proceed in January of 2019. In the initial Rule 26(f)(1) report, Plaintiff's Rule 26(a)(2) experts were to be disclosed on or before March 1, 2018 and their depositions were to be completed by May 1, 2018. Defendants were to disclose their experts on or before July 2, 2018, and the same were to be deposed by September 4, 2018. All discovery was to be completed by October 2018. (**Exhibit A**, May 11, 2017 Order).
3. On October 27, 2017, Plaintiffs first noticed the depositions of 5 Defendant-witnesses which were set to proceed on December 19, 2017 and December 20, 2017. (**Exhibit B**).

The facsimile correspondence attached to the notice of depositions indicates the dates were chosen arbitrarily but intended to spark scheduling of these fact witness depositions. (**Exhibit B**).

4. On December 12, 2017, the Plaintiffs were both timely produced for their discovery depositions.

5. On December 19, 2017, Plaintiffs' counsel called, and then later emailed, Defense counsel concerning outstanding discovery requested and to inquire about scheduling depositions of the previously-noticed Defendants. (**Exhibit C**). Defense counsel responded by stating that none of the K&B employees Plaintiffs' sought to depose were in Illinois and further advised that the Defendants' employees would not be coming to Illinois for their depositions.

6. On January 5, 2018, Plaintiffs issued supplemental written discovery concerning training videos and additional materials not yet produced. Defendants responded with objections. On February 23, 2018, Plaintiffs' counsel brought a motion for ruling on the objections. This Honorable Court later ruled on the Defendants' objections and required immediate production by Defense.

7. On January 17, 2018, after still not receiving dates for the Defendants' discovery depositions, Plaintiffs emailed Defense offering multiple dates for the depositions of the 7 Defendant fact-witness Plaintiffs previously indicated they sought to depose. (**Exhibit D**). In said email, Plaintiffs offered 6 dates within the month of February, and one March date for the Defendants' depositions which would proceed out of town.

8. Thereafter, Plaintiffs' counsel was concerned with obtaining answers to outstanding written discovery which was the subject of a motion before this Honorable Court on February 23, 2018 (discussed in Paragraph 6 above). Plaintiffs' counsel did not wish to take the

Defendants' depositions until she had all relevant written materials previously requested so as to obviate the need for a subsequent, repeat deposition.

9. Given the discovery delays, on March 7, 2018, this Honorable Court entered an order which required Plaintiffs' to file their Rule 26(a)(2) disclosures on or before April 16, 2018, and for Plaintiffs' experts' depositions to be completed by June 1, 2018. Defendants were to disclose their experts' reports on or before August 1, 2018 and the same were to be deposed by September 4, 2018. (**Exhibit E**).

10. On February 25, 2018, Plaintiff's counsel's father-in-law unexpectedly passed away. Despite the loss, Plaintiff's counsel took three Defendant K&B employee depositions, including the named Defendant truck driver, on March 22 and March 23, 2018 in Sioux City, Iowa.

11. On April 12, 2018, this Honorable Court entered an agreed order amending the Rule 26(a)(2) disclosure to permit Plaintiffs to disclose expert reports on or before May 7, 2018, and for the same to be deposed by June 15, 2018. Defendants' expert report deadlines were amended to August 15, 2018 and the same were to be deposed by September 18, 2018. (**Exhibit F**).

12. Since April 12, 2018 to the date of filing this Emergent Motion, Plaintiffs' counsel has suffered her own medical emergency, which caused her to reach out to counsel for the Defendants to extend the Rule 26(a)(2) disclosure schedule to ensure both parties got equal time to disclose and present their respective experts. (**Exhibit G** – Email String on April 30, 2018). The parties attempted to agree upon an amended disclosure schedule which would preserve the January of 2019 trial date.

13. The January of 2019 trial date has never been extended, and neither party has previously requested an extension of the same.

14. Plaintiffs' counsel proposed the Rule 26(a)(2) schedule be amended as follow:

- Plaintiffs file Rule 26(a)(2) Reports by: **6/11/18**
- Plaintiffs' Rule 26(a)(2) Experts deposed by: **7/30/18**
- Defendants file Rule 26(a)(2) Reports by: **9/3/18**
- Defendants Rule 26(a)(2) Experts deposed by: **10/29/18**

15. Plaintiffs' proposed schedule permits the parties two full months to consider expert rebuttal opinion, while preserving the January of 2019 trial date. Moreover, the proposed amended schedule gives the Defendants a full three months to share Plaintiffs' Rule 26(a)(2) experts reports with their own experts before the Defendants' experts need be disclosed, and almost five months thereafter for Defendants' experts to be deposed.


16. Plaintiffs' hope is that the January of 2019 trial date need not be extended, and that the above-referenced disclosure date be entered by this Honorable Court. However, in the alternative, should this Court find that the parties are not permitted sufficient time to conduct expert discovery, Plaintiffs request that the trial of this matter be continued for thirty (30) to forty-five (45) days after January of 2019 as the Plaintiffs are unable to meet the May 7, 2018 deadline to disclose their Rule 26(a)(2) experts.

17. The delay in deposing the K&B Defendants' was not the product of Plaintiffs' counsel's personal emergencies. Instead, prior to said emergencies, there is significant and substantial evidence that Plaintiffs worked earnestly to obtain deposition dates for the Defendants and to obtain all outstanding written discovery properly requested by Plaintiffs.

18. Therefore, Plaintiffs respectfully request this Honorable Court enter their proposed Amended Rule 26(a)(2) schedule and preserve the January 2019 trial date, or in the alternative enter the proposed Amended Rule 26(a)(2) schedule and continue trial of this matter for 30 to 45 days after January of 2019.

WHEREFORE, the Plaintiffs pray Honorable Court enter their proposed amended Rule 26(a)(2) schedule and preserve the January of 2019 trial date, or in the alternative continue the January 2019 trial of this matter another 30 to 45 days.

Respectfully submitted,

By: 

John M. Power

Hadas M. Benhamou

COGAN & POWER, P.C.

1 E. Wacker Drive, Suite 510

Chicago, IL 60601

Telephone: 312-477-2500

Fax: 312-477-2501

jpowers@coganpower.com

hbenhamou@coganpower.com

Attorneys for Plaintiffs

MOSES PEREZ and DEE PEREZ